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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/587,886	06/01/2007	Donald A. Stevens	4417-062209	2358

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EXAMINER

TRIGGS, ANDREW J

ART UNIT	PAPER NUMBER
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3635

MAIL DATE	DELIVERY MODE
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08/02/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/587,886	Applicant(s) STEVENS, DONALD A.	
	Examiner Andrew J. Triggs	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-10,12-17,21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) 21 and 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-10,12-14 and 17 is/are rejected.
- 7) ☒ Claim(s) 15 and 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>6/10/2010, 7/26/2010</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The Examiner acknowledges the amendments to claims 1, 2, 4, 6, 7 and 17 as well as the cancellation of claims 3, 11 and 18-20.

Double Patenting

2. Claims 1, 2, 4-10, 12-13 and 17 are provisionally rejected on the ground of nonstatutory double patenting over claims 1-33 of copending Application No. 10/790,628 and claims 12-33 of copending Application No. 12/472,044. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows:

Regarding claim 1, the copending applications teach in claim 15, a framing system comprising a plank member in the form of a generally planar sheet that has a front surface and opposing back surface with at least one resilient rib protruding from it where the ribs have a profile with a first side and a second side which diverge from one another as they extend away from the member and then converge. Figures 13 (A-G) show that the sides then converge to a tip at the furthest most extension of the rib. The maximum height of the rib occurs at maximum divergence. Claim 12 teaches a frame member having a receptor pocket that is matable with the rib on the plank. Figure 8 shows the receptor

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pocket has a minimum width less than that of the maximum height of the rib such that the rib may be captured within the pocket.

Regarding claim 2, Figure 8 shows the plank member and the frame member are secured to one another through the engagement of the rib and pocket.

Regarding claim 4, Figures 13 (A-G) show the first and second side of the rib are spaced apart from one another as they extend away from the member and define a hollow interior.

Regarding claim 5-6 and 8, Claim 12 states that the ribs are resilient and they correspondingly engage the pockets, thus making the pockets resilient.

Regarding claim 7, Figures 13 (A-G) show that the rib is continuous to define a solid rib.

Regarding claim 9, the lath (10) is pushed into the frame member (100) [Page 4, Paragraph 60 of published application].

Regarding claim 10, Figures 13 (A-G) show that the rib is barbed. This is also shown in claim 11.

Regarding claim 12, Claim 12 states there are receptor pockets in the frame member and claim 15 states there are ribs formed on the sheets.

Regarding claim 13, Figure 11 shows the rib is a separate piece secured to the back surface of the plank member.

Regarding claim 17, the copending applications teach in claim 15, a plank member in the form of a generally planar sheet that has a front surface and opposing back surface with at least one resilient rib protruding from it where the ribs have a profile with a first side and a second side which diverge from one another as they

extend away from the member and then converge. Figures 13 (A-G) show that the sides then converge to a tip at the furthest most extension of the rib. The maximum height of the rib occurs at maximum divergence. Claim 12 teaches a frame member having a receptor pocket that is matable with the rib on the plank. Figure 8 shows the receptor pocket has a minimum width less than that of the maximum height of the rib such that the rib may be captured within the pocket.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

3. Claim 14 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 12 and 15 of copending Application No. 10/790,628 and 12/472,044. Although the conflicting claims are not identical, they are not patentably distinct from each other because It would have been obvious to one having ordinary skill in the art at the time of the invention was made to place the receptor pockets on the plank and the ribs on the frame since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Allowable Subject Matter

4. Claims 15 and 16 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5. The following is a statement of reasons for the indication of allowable subject matter: None of the prior art or copending applications teach plank members that interlock or overlap.

Response to Arguments

6. Applicant's arguments/amendments with respect to the claims have been fully considered and are persuasive. The 102 and 103 rejections of claims 1-20 have been withdrawn. However, the claims are now subject to a double patenting rejection.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew J. Triggs whose telephone number is 571-270-3657. The examiner can normally be reached on Monday through Thursday 6:30am - 5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard E. Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Richard E. Chilcot, Jr./
Supervisory Patent Examiner, Art Unit 3635

/Andrew J Triggs/
Examiner, Art Unit 3635